

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE

RITA A. GARLAND)	
)	
v.)	NO. 2:06-CV-275
)	
MICHAEL J. ASTRUE,)	
Commissioner of Social Security)	

ORDER

This matter is before the Court to consider the Report and Recommendation of the United States Magistrate Judge. The defendant has filed objections to this report. [Doc. 21].

After careful and *de novo* consideration of the record as a whole and the Report and Recommendation of the United States Magistrate Judge, [Doc. 20], and for the reasons set out in the Report and Recommendation, which are incorporated by reference herein, it is hereby **ORDERED** that this Report and Recommendation is **ADOPTED** and **APPROVED** insofar as the Magistrate Judge finds that there was substantial evidence in the record to support the Administrative Law Judge's ("ALJ") decision of December 10, 2004 finding that the plaintiff was not disabled as of that date.

However, the recommendation that the case be remanded pursuant to Sentence Six of 42 U.S.C. §405(g) is not adopted and approved. Proof that the plaintiff's condition deteriorated after December 10, 2004 is not material because it does not concern the plaintiff's condition prior to the ALJ's hearing decision. Citing *Wyatt v. Secretary of Health & Human Servs.*, 974 F.2d 680, 685 (6th Cir.1992), the Sixth Circuit in *Jones v. Commissioner of Social Sec.*, 336 F.3d 469, 478 (6th Cir. 2003) reiterates that the court is "confined to review evidence that was available to the [ALJ], and to determine whether the decision of the [ALJ] is supported by substantial evidence," and as the Sixth Circuit has noted previously, "[e]vidence of a subsequent deterioration or change in condition after the administrative hearing is deemed immaterial." When deterioration subsequently occurs after the administrative hearing, the plaintiff has the option of filing a new claim based on a different period of disability other than the one considered by the ALJ. *Id.* at 478.

It is clearly settled that where the record as a whole contains substantial evidence to support the Secretary's determination, the Secretary's decision must be affirmed. *Asbury v. Commissioner of Social Sec.* 83 Fed.Appx. 682, 684 (6th Cir.2003); *Stanley v. Sec'y of Health & Human Servs.*, 39 F.3d 115, 117 (6th Cir.1994) (citations omitted). Accordingly, it is hereby **ORDERED** that

the motion for summary judgement filed by the plaintiff is **DENIED**, [Doc. 9],
and the motion for summary judgment filed by the defendant is **GRANTED**. [Doc.
11]

ENTER:

s/J. RONNIE GREER
UNITED STATES DISTRICT JUDGE